NO. 86021-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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DUC TAN, a single man; and VIETNAMESE COMMUNITY OF THURSTON COUNTY, a Washington corporation,

Petitioners,

v.

NORMAN LE and PHU LE, husband and wife; PHIET X. NGUYEN and VINH T. NGUYEN, husband and wife; DAT T. HO and "JANE DOE" HO, husband and wife; NGA T. PHAM and TRI V. DUONG, wife and husband; and NHAN T. TRAN and MAN M. VO, wife and husband,

Respondents.

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# PETITIONERS' SUPPLEMENTAL BRIEF

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## INTRODUCTION

In four written publications, the defendants accused Duc Tan and the Vietnamese Community of Thurston County ("Tan") "of taking tangible steps to support the Communist Party." ***Tan v. Le***, 161 Wn. App. 340, 352, 254 P.3d 904, *rev. granted*, 172 Wn.2d 1010 (2011). This falsehood is only one of many. The defendants lied and recklessly failed to investigate their lies, driven by their hostility and spite for Tan.

No authority allows defendants to lie about the facts and claim that their lies were only an "opinion." The appellate court's holding to the contrary is badly out of step with decades-old common law, and binding precedent from this Court and the United States Supreme Court.

This case has nothing to do with opinion – it is about false facts. The jury learned much about Vietnamese culture, witnessed the defendants' hostility, saw through their lies, and awarded appropriate damages. The appellate court's reversal denies these Vietnamese Americans true access to justice.

This Court should reverse the appellate court and re-affirm the jury's verdict.

## SUPPLEMENTAL ARGUMENT

### A. The appellate court incorrectly assumed that the defendant's publications were "opinion," without addressing the issue.

"English-American defamation law has always distinguished between fact and opinion." ***Dunlap v. Wayne***, 105 Wn.2d 529, 537, 716 P.2d 842 (1986). The appellate court overlooked or misapprehended this crucial distinction, summarily concluding that the gist of the defendants' false factual assertions is the unstated opinion that Tan is a Communist. The court cited no authority, nor is Tan aware of any, that stating false facts arguably implying an opinion converts the fact statements themselves into opinions. This Court should reverse.

A defamation claim must be based on a statement that is "provably false." ***Mohr v. Grant***, 153 Wn.2d 812, 825, 108 P.3d 768 (2005); ***Schmalenberg v. Tacoma News, Inc.***, 87 Wn. App. 579, 590, 943 P.2d 350 (1997), *rev. denied*, 13 Wn.2d 1013 (1998) (citing ***Milkovich v. Lorain Journal Co.***, 497 U.S. 1, 19-20, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990)). Falsity can be express or implied, and total or partial. ***Mohr***, 153 Wn.2d at 825; ***Schmalenberg***, 87 Wn. App. 590, 592-93 (citing ***Herron v. KING Broadcasting Co.***, 112 Wn.2d 762, 774, 776 P.2d 98 (1989); ***Mark***

***v. Seattle Times***, 96 Wn.2d 473, 481, 635 P.2d 1081 (1981), *cert. denied*, 457 U.S. 1124, 102 S.Ct. 2942, 73 L.Ed.2d 1339 (1982)). A statement is "provably false" if it "falsely expresses or implies provable facts." ***Schmalenberg***, 87 Wn. App. at 590-91 (citing ***Milkovich***, 497 U.S. at 19-20; ***Dunlap***, 105 Wn.2d at 538-59; RESTATEMENT (SECOND) OF TORTS § 566 ("§ 566") at 170). This includes factual statements in the guise of an opinion. *Id.*[1]

At issue here is the crucial distinction between calling someone a Communist – an opinion – and accusing someone of working for the Communist Party – an "allegation[] of fact." ***Buckley v. Littell*** 539 F.2d 882, 894 (2nd Cir. 1976), *cert. denied*, 429 U.S. 1062 (1977). In ***Buckley***, publisher William Buckley sued author Franklin Littell for defamation when Littell published a book accusing Buckley of being a "fellow traveler of fascism." ***Buckley***, 539 F.2d at 893. The Circuit Court held that "fascist" and "fellow traveler" were not defamatory in large part "because of the tremendous imprecision of the meaning and usage of these terms . . ." *Id.* at 893.

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[1] As addressed below, a statement of opinion that does not "express or imply provable facts," cannot be provably false. ***Schmalenberg***, 87 Wn. App. at 591 (citing ***Dunlap***, 105 Wn.2d at 537-38; § 566 at 170); *infra*, Argument § C.

The Circuit Court noted, however, that it would be "quite another case" if Littell had accused Buckley of associating with the Fascisti or some "mythical Fascist Party." *Id.* at 893-94 & n.11. The Circuit Court distinguished cases where a person is being accused of affiliating with the Communist Party, explaining that "[s]uch allegations of membership or well-defined political affiliation are readily perceivable as allegations of fact susceptible to proof or disproof of falsity." *Id.* at 894.

There are four defamatory publications at issue in this case – a "Public Notice" disseminated by email and online, and three articles published in local Vietnamese newsletters. ***Tan***, 161 Wn. App. at 350-51.[2] Since the articles largely repeat the Public Notice, this brief (and the appellate opinion) focus on the Public Notice, making the following false factual assertions:

- "Since its establishment, the [VCTC] has been accused of doing activities for the Vietnamese Communists, by several organizations . . .";
- Following a dispute about the VCTC's name, "all the local anti-communist organizations, societies, had boycotted and did not recognize [the VCTC] from the beginning";
- The VCTC President stated, "'**there is nothing wrong with receiving VC money**'";

[2] All of the publications were in Vietnamese and were translated for trial. Exs 7-11, 14 A, 18.

- In its newsletter, the VCTC "[s]uggested the idea of organizing the yearly anniversary of **September 2**," a holiday for communist Vietnam[3];
- The VCTC "[i]naugurated" an event by playing the "whole portion" of the "**VC anthem**," after which "the audience stood up and protested violently";
- Tan "intentionally ignored" the VC flag hanging in "his" classroom where he taught Vietnamese, and "refused to display the National flag";[4]
- Tan went "'under the table' . . . to send the secret message to the Dean" of South Puget Sound Community College that there was "no need for removing the bloody communist flag" hung at the school;
- The VCTC "[o]rganized the Autumn 2002 Meeting to commemorate the Fall Revolution," a historic event in the history of Ho Chi Minh and Communist Vietnam;[5]
- The "Tan gang [has] hidden under the Nationalist coat to serve the common enemy of the Vietnamese refugees that is the Communist Hanoi";
- "Tan and his companions, **NO ONE had a clear background, enough to guarantee that they are Nationalists (not in the military to protect the South Vietnam, not been imprisoned by the Communists, etc...)**";
- "[N]o one ever saw the [VCTC] participate in anti-communist activities."

Ex 8 (emphasis original).

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[3] RP VIII 1369-70 (volume numbers are used when page numbers were duplicated in the Report of Proceedings).

[4] Tan was the principal of a Vietnamese language school that met in the evenings, using classrooms borrowed from a local private school. RP 834-35.

[5] RP 1100.

These assertions are provably false facts. BR 10-18. Indeed the defendants assert that they "disclosed all of the facts" and that these were "admitted facts." BA 33, 36.[6]

The plaintiffs proved falsity at trial. BR 10-18. As just one example, the defendants stated that they could not "guarantee" that Tan was a Nationalist where he was not in the South Vietnamese military and was not imprisoned by the VC. Ex 8 (emphasis omitted). But Tan, a military officer, was sent to a Communist reeducation camp after Saigon fell. 161 Wn. App. at 345.

The appellate court failed to treat these statements as facts, effectively ignoring this Court's holding in ***Mohr*** (and ***Milkovich***). *Id.* at 352-55.[7] The court was apparently led astray by the defendants' repeated assertions that they said only that Tan was a "Communist" or a "Communist Sympathizer"[8] (*id.* at 352):

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[6] The defendants filed three appellants' briefs. This brief refers only to the brief filed by Le, Ho, Tran, and Vo, in which the other defendants joined. Pham and Duong BA 1; Phiet and Nguyen BA 1, 8.

[7] The appellate court began its analysis with the three-part ***Dunlap*** test, which differentiates between actionable and non-actionable opinion. *Id.* at 353. As discussed below, ***Dunlap*** is inapplicable where, as here, the defendants publish false facts, not opinions. *Infra*, Argument § C.

[8] Tan explained that the defendants went far beyond calling him a Communist, accusing him "of taking tangible steps to support the Communist Party." 161 Wn. App. at 352. Tan also argued that even if the Public Notice contained opinions, the underlying false facts are actionable defamation. *Id.*

- "The defendants publicized their belief that Duc Tan was a Communist." BA 5-6.
- "The gist of the dispute was the defendants' asserted belief that plaintiff Duc Tan was a Communist, or a Communist sympathizer." BA at 7.
- "THE STATEMENT THAT THE DEFENDANTS BELIEVED DUC TAN TO BE PRO-COMMUNIST . . . ." BA 30.
- "[T]he gist of the allegedly defamatory Public Notice was the assertion by the defendants of their belief that Duc Tan was a Communist or a Communist sympathizer." BA 32.

But the Public Notice never calls Tan a "Communist" or a "Communist Sympathizer," nor does it express anything in the form "we think" or "we believe." Ex 8; *see* ***Milkovich***, 497 U.S. at 19-20. Rather, the Public Notice plainly accuses Tan – among many other things – of defending the VC flag, organizing Communist celebrations, playing the VC anthem, and "doing activities for the Vietnamese Communists." Ex 8. The defendants cannot escape liability for publishing false facts by arguing that they imply an unstated opinion.

In short, the defendants did not merely opine that Tan is a Communist – they accused him of promoting and working for the VC. These false facts are actionable defamation.

**B. Even assuming that the Public Notice includes or implies a protected opinion, the defendants are liable for publishing false and defamatory facts.**

The appellate court misunderstood and misapplied this Court's decision in ***Dunlap***, holding that the defendants' false factual statements are not actionable because they were disclosed. ***Tan***, 161 Wn. App. at 353-54; ***Dunlap***, 105 Wn.2d at 537-39. ***Dunlap*** recognizes that an opinion statement may be defamatory if it implies undisclosed false facts. 105 Wn.2d at 538-40. This Court in no way suggested that opinion speech protects disclosed false facts, though that is the result of the appellate court's holding. *Compare id. with* ***Tan***, 161 Wn. App. at 353. This Court should reverse the appellate court and re-affirm the jury verdict.

***Dunlap*** follows the United States Supreme Court's decision in ***Gertz***, rendering unconstitutional the old common law rule that an opinion accompanied by disclosed facts could itself be defamatory, distinct from the defamatory facts. ***Dunlap***, 105 Wn.2d 537-38; § 566 cmts. b & c (explaining ***Gertz v. Robert Welch, Inc.***, 418 U.S. 323, 94 S. Ct. 2997, 41 L.Ed.2d 789 (1974)). At common law, there were "two kinds of expression of opinion": opinions based on stated facts and opinions based on implied facts. § 566 cmt. b. If a defendant stated an opinion along with supporting facts,

the opinion and the facts could each be defamatory as "separate matters" (§ 566 cmt. b):

> There are two kinds of expression of opinion. The simple expression of opinion, or the pure type, occurs when the maker of the comment states the facts on which he bases his opinion of the plaintiff and then expresses a comment as to the plaintiff's conduct, qualifications or character. The statement of facts and the expression of opinion based on them are separate matters in this case, and at common law either or both could be defamatory and the basis for an action for libel or slander.

But the following *dicta* from ***Gertz*** shifted the analysis:

> Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.

***Dunlap***, 105 Wn. 2d at 537-38 (quoting ***Gertz***, 418 U.S. at 339-40, footnote omitted). "Reasoning from this dicta, the Restatement concluded" (*Id.*, quoting § 566):

> A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.

This Court adopted § 566, creating a three-factor test for determining when an opinion is actionable (105 Wn.2d at 538-39):

> We agree that examining a statement in the totality of the circumstances in which it was made is the best means to determine whether a statement should be characterized as nonactionable opinion. To determine whether a statement is nonactionable, a court should consider at least (1) the

> medium and context in which the statement was published, (2) the audience to whom it was published, and (3) whether the statement implies undisclosed facts.

***Gertz***'s legacy is that an opinion accompanied by disclosed facts is not independently defamatory. ***Dunlap***, 105 Wn.2d at 539-40. But neither ***Gertz***, the RESTATEMENT, nor ***Dunlap*** changed the common law rule that false facts accompanying an opinion statement are actionable as a "separate matter[]." 566 cmt. b.

And ***Dunlap*** does not remotely suggest that implying an opinion by publishing false facts protects the otherwise defamatory facts. Rather, the third prong of the ***Dunlap*** test (distinguishing between opinions based on disclosed and undisclosed facts) assumes that the disclosed facts are true (105 Wn.2d at 540):

> A simple expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is.

Again, ***Dunlap*** does not speak to disclosed false facts, but extends liability to those who imply false facts. ***Dunlap*** cannot reasonably be applied to protect those who publish false facts.

Such a reading also conflicts with the comments to § 566, upon which ***Dunlap*** is based, and the United States Supreme Court's ***Milkovich***. As discussed in detail above, §566 comments b and c explain that while opinions accompanied by published facts

are protected, the facts are still actionable. The appellate court correctly stated this rule as follows:

> A defendant who bases his derogatory opinion of the plaintiff on his own statement of false and defamatory facts can be subject to liability for the factual statement but not for the expression of opinion.

***Tan***, 161 Wn. App. at 355 (citing § 566 cmt. *c*; ***Dunlap***, 105 Wn.2d at 538 (adopting § 566)). But the court inexplicably ignored its own correct statement of law.

And ***Milkovich*** held that while opinions are protected, false facts a speaker "states" to support his opinion are actionable:

> If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. *Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact.* . . . It is worthy of note that at common law, even the privilege of fair comment did not extend to "a false statement of fact, whether it was expressly stated or implied from an expression of opinion." . . . [§ 566, Comment *a*].

497 U.S. at 18-19 (emphasis added).

In sum, publishing false facts is defamatory, regardless of whether the facts are accompanied by or imply an opinion. This Court should reverse the appellate court and re-affirm the jury verdict.

### C. *Mark* and *Herron* do not protect defamatory facts simply because they arguably imply a protected opinion.

As discussed above, the Public Notice states many false facts, but states no opinion. *Supra* Argument § A; Ex 8. But even assuming *arguendo* that the "gist" of the defendants' publications is their opinion that Tan is a Communist, they are still liable for their many false and defamatory factual statements. The Appellate court incorrectly held that Tan could not recover under ***Herron*** and ***Mark***, *supra*, misunderstanding and misapplying those inapposite cases. ***Tan***, 161 Wn. App. at 355-56.

In ***Mark***, the prosecutor's office stated that there was probable cause to believe that Mark, a pharmacist, had fraudulently billed more than $200,000, but the formal charge was that he fraudulently billed more than $75. ***Mark***, 96 Wn. 2d at 476-77. The State proved invalid Medicaid claims totaling about $2,500. 96 Wn. 2d at 477. KOMO-TV reported that Mark had fraudulently billed $300,000 or $350,000, and KIRO-TV reported that Mark had been charged with defrauding the State of $200,000. *Id.* at 478-79, 481.

The trial court dismissed Mark's defamation suit on summary judgment. *Id.* at 475-76. The appellate court affirmed, holding – as Judge Morgan correctly put it – "that the press reports were partly

true and partly false, and that Mark had failed to produce evidence from which a rational trier of fact could find that the false parts had caused damage that the true parts would not have caused anyway." ***Schmalenberg***, 87 Wn. App. at 595.

In ***Herron***, KING-TV accurately reported that an FBI investigation of the Pierce County Prosecutor's office linked Chief Prosecutor Don Herron to bail bondsmen who had been arrested, one of whom contributed to Herron's campaigns. 112 Wn.2d at 770-71. But KING falsely reported that when Herron defeated the former Prosecutor in 1974, bail bondsmen contributed about half of Herron's campaign money. *Id.* at 765-66, 769.

The trial court dismissed Herron's defamation claim on summary judgment. *Id.* at 767. This Court reversed, holding that the falsehood "added a distinct and separate implication," damaging Herron. *Id.* at 772. The Court explained that when a publication contains true and false statements, the plaintiff must prove damages from the false statements "distinct from that caused by true negative statements." *Id.* at 771-72.

In short, ***Mark*** and ***Herron*** protect defamation defendants when their true – so necessarily non-defamatory – factual statements create the "sting" of the publication that causes

damages. ***Mark***, 96 Wn.2d 496; ***Herron***, 112 Wn.2d at 771-72. They do not permit defendants to escape liability when their factual statements are mostly, if not entirely, false.

The appellate court incorrectly extended ***Mark*** and ***Herron*** in this case, holding that any false facts in the Public Notice "are merely iterations of the defendants' conclusion that Tan and the VCTC are Communists." ***Tan*** 161, Wn. App at 357. This turns ***Mark*** and ***Herron*** on their heads: nothing in ***Mark*** or ***Herron*** suggests that an opinion – an "idea" that is neither true nor false – shields false facts if the sting is the same. On the contrary, this holding is inconsistent with ***Mark*** and ***Herron***, where false facts that significantly contribute to the damages caused by the truth are actionable. Tan was damaged by a series of false facts. ***Mark*** and ***Herron*** are inapposite.

### D. The jury correctly found actual malice, where the defendants, driven by hostility and spite, lied and recklessly disregarded the falsity of their statements.

For at least eight years before defaming Tan, the defendants (some of whom where VCTC members) worked with Tan to oppose Communism. The parties saw Tan at anti-communist events, witnessed him speak at anti-communist rallies, and knew that he and his students saluted the National flag before starting classes at

the Vietnamese school Tan directed. But the defendants did not like that Tan often chose to pursue the anti-communist agenda with a more diplomatic and less aggressive approach. The defendants' hostility peaked when the parties diverged on how to best address the removal of the VC flag from a local Community College, at which time the defendants' group lost over half of its support as a direct result of Tan's actions. Weeks later, the angry defendants used a Santa Claus apron as an obvious pretext to defame Tan.

The jury witnessed the defendants' hostility and disbelieved their lies and excuses. But the appellate court excused the defendants' conduct as an overreaction to incidents that are "not black or white." ***Tan***, 161 Wn. App. at 363. This Court should reverse the appellate court and re-affirm the jury verdict.

A public figure may recover damages for defamation only upon showing that the defendant acted with "actual malice" – knowledge that his statement is false or in "reckless disregard of its truth or falsity." ***Herron v. KING Broadcasting, Co***, 109 Wn.2d 514, 523, 746 P.2d 295 (1987) (citing ***New York Times Co. v. Sullivan***, 376 U.S. 254, 279-80, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)), *reaffirmed*, 112 Wn.2d 762. A defendant acts with "reckless disregard" if he "'entertained serious doubts' as to the

statement's truth," or had a "'high degree of awareness of [its] probable falsity.'" ***Herron***, 109 Wn.2d at 523 (quoting ***Garrison v. Louisiana***, 379 U.S. 64, 74, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964) and ***St. Amant v. Thompson***, 390 U.S. 727, 731, 88 S. Ct. 1323, 20 L. Ed. 2d 262 (1968)). "[A]ctual malice can be inferred from circumstantial evidence, including defendant's hostility or spite . . . and failing to properly investigate." ***Herron***, 109 Wn.2d at 524.

The defendant's animosity toward Tan began in 1995, when the VCTC changed its name. RP 634. A majority rejected Le's proposed name. RP 635-37, 652. The Public Notice falsely states that "all the local anti-communist organizations" boycotted and refused to recognize the VCTC, though even Le himself remained a member. *Compare* Ex 8 *with* RP 652-53, 655, VIII 1384.

In 1997, the VCTC held an event at which one band member accidentally played the first nine notes of the VC anthem. RP 413, VIII 1377. Shortly thereafter, Le paid a Vietnamese Newsletter to publish an article he wrote, falsely claiming that the accident was the "strategy [of] the Vietnamese Communist Intelligence." RP VIII 1357, 1378; Ex 66. The VCTC subsequently held a press conference, at which the bandleader apologized for the mistake. RP 700, 846-47.

The Public Notice falsely states that the band played "the whole" anthem and that the crowd "protested violently." Ex 8. None of the defendants were there – their source is largely Le's false 1997 letter. RP VIII 1378. Few attendees even noticed the mishap. RP 414, 855.

In 1999, a VCTC newsletter stated that the VCTC should "pay attention to and improve . . . the Armed Forces Day on the 2nd of September . . . ." Ex 44; RP VIII 1371-72. Armed Forces Day is a South Vietnamese celebration, but September 2nd is a VC holiday. RP VIII 1369-70, 1373, 1464. The Public Notice falsely states that the VCTC organized a celebration of the VC holiday. Ex 8. The defendants acknowledge that they knew only that the VCTC had a celebration in the fall. RP 1170, 1173-74.

In late 2002 to early 2003, the defendant's hostility grew as the parties disagreed on how best to address the VC flag displayed in the local Community College. RP 570, 865-67, 1193. When the school refused to remove the flag after the parties' protest, the parties met to discuss strategy. RP 865. With only 16 people present, defendants Le and Tan Vu were elected as co-chairs. RP 865-67. When 60 people attended the second meeting, a majority – including Tan – requested new elections to insure greater

representation. RP 570, 866. Le refused, and over half of the attendees left, withdrawing their support for the defendant's organization. RP 570, 1333.

Tan continued to speak publically about removing the flag and worked with the school. RP 419-20, 570-71, 777-79. When the school removed the flag, Tan attended the celebration alongside many of the defendants. RP 1098-99. Yet the Public Notice falsely states that Tan secretly told the Dean that "there is no need for removing the bloody communist flag." Ex 8.

The Public Notice also falsely states that Tan "refused to display the National flag." Ex 8. Defendant Dat Tan Ho knew before signing the Public Notice that Tan displayed the National flag at his language school. RP 1167. Defendant Tanya Tran claimed that she did not recall this statement in the Public Notice. RP 1095. Others knew that Tan said he and his students saluted the flag before class, but they did not believe him. RP 1325.

Shortly after this animosity over the flag display, Dai Pham, a volunteer at Tan's Lakefair food stand (painted to resemble the National flag), found a Santa Claus apron on a Coca-Cola vending machine outside the stand. RP 364, 855-56; Exs 1, 2 & 3. Pham wore the apron inside out as it had gold stars on a red background.

RP 365. None of the VCTC members knew who owned the apron, and none thought it depicted a communist image. *Id.* at 365-66. Pham had no idea whether the VCTC was trying to display a communist image and did not think that they were trying to get him to wear the apron. RP 373.

The Public Notice falsely suggests that Tan displayed the Santa apron to "show the presence of the Hanoi Communist regime in the Vietnamese community . . . ." Ex 8. Amongst many other outright lies, Pham did not find the Santa apron "in the kitchen," but outside on a Coke machine. *Compare* Ex 8 *with* RP 364, 855-56. There is not a single flag on the apron, much less "numbers of American flags, scattered and swallowed by the VC flag." *Compare* Ex 8 *with* Ex 3.[9] There is no "red crescent" on Santa's head, and no evidence whatsoever that the VC created the apron. *Id.* And Pham was not too "scared" to attend the defendant's press conference about the apron, he was at choir practice. RP 372.

Finally, the Public Notice falsely states that Tan was not in the South Vietnamese military and was not imprisoned by the VC.

[9] Lest there be any doubt, Colonel Len Y. Hau asked the defense to take down an image of the VC flag during his testimony, explaining that he 'hate[s] it so much that [he does not] want to see that flag anywhere, any shape, any form." RP 595, 609-10. Colonel Hau did not see a VC flag on the apron, stating "[t]his . . . is recognizable as an apron for a cook." RP 616.

Ex 8. But the defendants who signed the Public Notice had no knowledge about Tan's background and never asked Tan. RP 1097, 1216, 1220, 1223, 1316-17, 1325-26, 1481. Their excuse was that "candidates" in the U.S. voluntarily disclose their "background" to their "constituents." RP 1316-17, 1325, *see also* RP VIII 1351-52.

The trial court allowed the jury to be immersed in the Vietnamese culture, giving them an understanding of the grave seriousness of the defendants' lies. The jury simply did not believe the defendants. The appellate court gave short shrift to the jury's "credibility choices." ***Richmond v. Thompson***, 130 Wn.2d 368, 389, 922 P.2d 1343 (1996). This Court should reverse.

## CONCLUSION

For the reasons stated above, this Court should reverse the appellate court and re-affirm the jury verdict.

RESPECTFULLY SUBMITTED this 14th day of December, 2011.

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## CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing **PETITIONERS' SUPPLEMENTAL BRIEF** prepaid, via U.S. mail on the 14th day of December 2011, to the following counsel of record at the following addresses:

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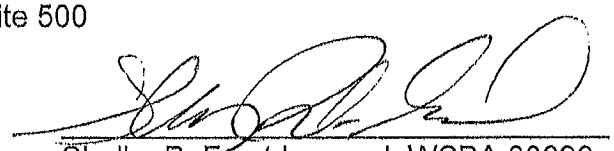

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